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IN THE FIRST JUDICIAL DISTRICT OF MONTANA  
COUNTY OF LEWIS AND CLARK

PEOPLE OF THE STATE OF MONTANA,  
*ex rel.* MIKE MCGRATH, ATTORNEY  
GENERAL OF THE STATE OF  
MONTANA; FLATHEAD ELECTRIC  
COOPERATIVE, INC., a Montana  
corporation; and ROES 1 THROUGH 100,  
INCLUSIVE

Plaintiffs,

vs.

WILLIAMS ENERGY MARKETING AND  
TRADING COMPANY; RELIANT ENERGY  
SERVICES, INC.; DUKE ENERGY  
TRADING AND MARKETING, LLC;  
DYNEGY POWER MARKETING, INC.;  
MIRANT CORPORATION; ENRON  
ENERGY SERVICES, INC.; ENRON  
POWER MARKETING, INC.; MORGAN  
STANLEY CAPITAL GROUP, INC.;  
POWEREX; EL PASO MERCHANT  
ENERGY; AMERICAN ELECTRIC  
POWER; AVISTA CORPORATION;  
PORTLAND GENERAL ELECTRIC

Case No.:

**COMPLAINT FOR INJUNCTION,  
RECOVERY OF DAMAGES, AND  
OTHER EQUITABLE AND ANCILLARY  
RELIEF AND DEMAND FOR  
JURY TRIAL**

1 COMPANY; BP ENERGY; GOLDMAN )  
2 SACHS GROUP, INC.; and DOES 1 )  
3 THROUGH 100, INCLUSIVE )

4 Defendants. )  
5 )  
6 )  
7 )

8 COME NOW the Plaintiffs, PEOPLE OF THE STATE OF MONTANA, *ex rel.* MIKE  
9 MCGRATH, ATTORNEY GENERAL OF THE STATE OF MONTANA (“ATTORNEY  
10 GENERAL”); FLATHEAD ELECTRIC COOPERATIVE, INC. (“FLATHEAD”) and; ROES 1  
11 THROUGH 100, INCLUSIVE (“ROES”), and for their cause of action against the Defendants  
12 allege the following.

13 **NATURE OF ACTION**

- 14 1. This is an action instituted under the laws of Montana for injunctive and equitable relief  
15 for injuries that were and are being sustained as a result of Defendants’ unlawful and  
16 unfair business practices involving the sale of wholesale electricity and natural gas and  
17 Defendants’ manipulation of the markets for wholesale electricity and natural gas. This  
18 action seeks damages, restitution, and disgorgement with respect to the monetary injuries  
19 suffered and being suffered by Plaintiffs due to Defendants’ manipulation of electricity  
20 and natural gas prices.
- 21 2. As described below, Plaintiffs allege that Defendants unlawfully manipulated the markets  
22 for electricity and natural gas by fixing prices and restricting supply into the markets  
23 operated by the California Power Exchange (“PX”) and the California Independent  
24 System Operator (“ISO”) or by engaging in other conduct for the purpose of artificially  
25 and illegally inflating the prices of electricity and natural gas and/or charging unlawful  
26 prices for such electricity and natural gas.
- 27 3. On information and belief, such conduct occurred within Montana, as well as other states  
28 on the Western Power Grid. The Federal Energy Regulatory Commission (“FERC”) has

1 stated that the markets in the West are highly interconnected and, on information and  
2 belief, intentional and reckless conduct in the Western Power Grid had extremely adverse  
3 consequences in Montana. Businesses shut down, people lost their livelihoods, and  
4 people on fixed income were forced to spend precious money on a necessity that was  
5 intentionally inflated to serve the ends of bad actors.

6 4. As a direct and foreseeable result of Defendants' conduct, retail and wholesale customers  
7 in Montana have paid and are paying substantially higher prices for electricity and natural  
8 gas than they would pay in a competitive and unmanipulated market.

9 5. Montana's economy, on information and belief, was intentionally drained of millions of  
10 dollars to line the pockets of Defendants.

11 6. Defendants include companies that acted as brokers or marketers on the Western Power  
12 Grid and key electricity and natural gas traders on the Western Power Grid who "gamed"  
13 the power market and participated in other manipulative practices, thereby contributing to  
14 the artificial and illegal increase of electricity and natural gas prices in the wholesale  
15 markets.

16 7. Certain of these Defendant companies engaged in a series of scams with names such as  
17 "Death Star," "Ricochet," "Wheel Out," and "Get Shorty." These scams contributed to a  
18 false electricity shortage in California and electricity and natural gas price manipulation  
19 throughout the West, including Montana, thereby artificially inflating the prices of  
20 electricity and natural gas.

21 8. Defendants also include generators who either withheld generation, sold generation into  
22 the market at wildly inflated prices or double-sold the same generation to the California  
23 ISO, including to the Bonneville Power Association ("BPA") who then resold to  
24 Montana.

25 9. As a result of Defendants' anti-competitive and fraudulent schemes during 2000 and  
26 2001, wholesale electricity and natural gas rates far exceeded rates in a fully competitive  
27 market.  
28

1 10. Due to this uncompetitive electricity and natural gas market, Montana ratepayers paid  
2 electricity and natural gas prices greatly in excess of rates that would exist in a  
3 competitive and unmanipulated market.

4 11. This action seeks to remedy Defendants' ongoing manipulation of wholesale and retail  
5 energy and natural gas prices and supplies, which has resulted in drastic energy shortages  
6 and price increases. Plaintiffs seek an injunction requiring Defendants to cease and desist  
7 from committing further acts of unfair trade practices. Plaintiffs further seek an Order for  
8 three times the actual damages sustained as a direct result of such unfair trade practices.  
9 Plaintiffs also seeks damages for deceit with intent to commit fraud and for prima facie  
10 torts committed by Defendants.

11 **JURISDICTION AND VENUE**

12 12. This Court has jurisdiction to hear the claims alleged in this Complaint and is a court of  
13 competent jurisdiction to grant the relief requested pursuant to Mont. Code Ann. §3-5-  
14 302(1)(b). Additionally, this Court has jurisdiction because Plaintiffs bring their claims  
15 under Montana's Unfair Trade Practices and Consumer Protection Act of 1973  
16 ("Montana Unfair Trade Practices Act"). M.C.A. § 30-14-101 *et seq.* The court also has  
17 jurisdiction over common law claims for fraud and prima facie tort. Mont. Code Ann.  
18 Title 25, Chapter 20, M.R.Civ.P., Rule 4B(1)(a) and (b).

19 13. Each Defendant does sufficient business in Montana or otherwise has sufficient minimum  
20 contacts in Montana by intentionally availing themselves of the Montana market through  
21 the distribution, sale, or trade of electricity or natural gas in the State of Montana or by  
22 having a facility located in Montana to render the exercise of jurisdiction over them by a  
23 Montana court consistent with traditional notions of fair play and substantial justice.  
24 Furthermore, Defendants collectively have effectively availed themselves of the Montana  
25 market through improper manipulation of the Western electricity and natural gas markets  
26 with known deleterious effects on Montana and its citizens.

27 14. Venue is proper in Lewis and Clark County because the cause of action alleged in this  
28 Complaint, and the liability arising therefrom, arose in part in Lewis and Clark County.

1 Additionally, many of the violations of law alleged herein occurred in Lewis and Clark  
2 County. M.C.A. § 25-2-124.

3 **PARTIES**

4 15. Plaintiff ATTORNEY GENERAL is the chief law officer of the State of Montana and is  
5 a representative of the people of the State of Montana for purposes of this litigation.  
6 Mont. Const. Art. VI, § 4(4). The ATTORNEY GENERAL brings this suit in part  
7 pursuant to the doctrine of *parens patriae*. The Montana Unfair Trade Practices Act  
8 authorizes the ATTORNEY GENERAL to seek injunctive relief from unfair trade  
9 practices and to recover damages up to three times the amount of actual damages  
10 sustained. M.C.A. § 30-14-222(1) and (2).

11 16. Plaintiff FLATHEAD is a Montana corporation with offices in Kalispell and Libby,  
12 Montana, and is a purchaser of power from Defendants. FLATHEAD is a locally owned  
13 and operated rural electrical cooperative serving its members in northwest Montana.

14 17. The true names and capacities of Plaintiffs ROES have not yet been discovered. Each  
15 fictitiously named Plaintiff is a ratepayer or energy consumer who was injured by  
16 Defendants through excess prices in the general market for electricity and natural gas.

17 18. Defendant WILLIAMS ENERGY MARKETING AND TRADING COMPANY  
18 (“WILLIAMS”), formerly known as Williams Energy Services, is a Delaware  
19 corporation with headquarters in Tulsa, Oklahoma. WILLIAMS sells and trades  
20 electricity in the PX and ISO markets. WILLIAMS is a certified scheduling coordinator  
21 on the ISO.

22 19. Defendant RELIANT ENERGY SERVICES, INC. (“RELIANT”) is a Delaware  
23 corporation with headquarters in Houston, Texas. RELIANT generates, sells, and trades  
24 electricity in the PX and ISO markets. RELIANT is a certified scheduling coordinator on  
25 the ISO.

26 20. Defendant DUKE ENERGY TRADING AND MARKETING, LLC (“DUKE”) is a  
27 Delaware corporation that generates, sells, and trades electricity in the PX and ISO  
28 markets.

- 1 21. Defendant DYNEGY POWER MARKETING, INC. (“DYNEGY”) is a Texas  
2 corporation with headquarters in Houston, Texas. DYNEGY directly or indirectly  
3 generates and sells electricity in the PX and ISO markets. DYNEGY is a merchant  
4 power company and a certified scheduling coordinator on the ISO.
- 5 22. Defendant MIRANT CORPORATION (“MIRANT”), formerly Southern Energy, Inc.  
6 (“Southern Energy”), is a Delaware corporation doing business through its California  
7 subsidiaries. MIRANT generates, sells, and trades electricity in the PX and ISO markets.  
8 MIRANT is a merchant power company. Southern Energy is a certified scheduling  
9 coordinator on the ISO.
- 10 23. Defendant ENRON ENERGY SERVICES, INC. (“EES”) is an Oregon corporation with  
11 headquarters in Houston, Texas. EES sells and trades electricity in the PX and ISO  
12 markets. EES and its affiliated companies were the number one seller of power in the  
13 United States. EES is a certified scheduling coordinator on the ISO and is currently in  
14 bankruptcy.
- 15 24. Defendant ENRON POWER MARKETING, INC. (“EPM”) is an Oregon corporation  
16 with headquarters in Houston, Texas. EPM sells and trades electricity in the PX and ISO  
17 markets. EPM is a certified scheduling coordinator on the ISO and a member of the ISO  
18 board. EPM is currently in bankruptcy.
- 19 25. Defendant MORGAN STANLEY CAPITAL GROUP, INC. (“MORGAN STANLEY”)  
20 is a Delaware corporation with headquarters in New York, New York. MORGAN  
21 STANLEY sells and trades electricity in the PX and ISO markets.
- 22 26. Defendant POWEREX is a wholly owned subsidiary of BC Hydro, a British Columbia  
23 Crown Corporation. POWEREX is a leading marketer of wholesale energy products and  
24 services in western Canada and the western United States. POWEREX is a leading  
25 marketer and trader in the Pacific Northwest, including Montana west of the Continental  
26 Divide.
- 27 27. Defendant EL PASO MERCHANT ENERGY (“EL PASO”) is a wholly owned  
28 subsidiary of El Paso Corporation, a Delaware corporation with headquarters in Houston,

1 Texas. EL PASO owns the Colorado Interstate Gas (“CIG”) pipeline that interconnects  
2 with Northwestern Energy’s (“NWE”) pipeline at Grizzly, Montana. EL PASO is a  
3 leading provider of natural gas services and the largest pipeline company in North  
4 America.

5 28. Defendant AMERICAN ELECTRIC POWER (“AEP”) is a New York corporation with  
6 headquarters in Columbus, Ohio. AEP is the largest electricity generator in the United  
7 States, generating power sold into Montana.

8 29. Defendant AVISTA CORPORATION (“AVISTA”) is a Washington corporation with  
9 headquarters in Spokane, Washington. AVISTA markets and trades electricity and  
10 natural gas, servicing the wholesale market and end-use customers. AVISTA is one of  
11 the owners of the coal generation facility in Colstrip, Montana. AVISTA also owns the  
12 Noxon Rapids hydroelectric generation project on the Clark Fork River in Montana.

13 30. Defendant PORTLAND GENERAL ELECTRIC COMPANY (“PGE”) is an Oregon  
14 corporation with headquarters in Portland, Oregon. PGE trades power to other utilities,  
15 including utility providers in Montana. PGE also owns 20 percent of the coal-fired  
16 generation facility in Colstrip, Montana.

17 31. Defendant BP ENERGY is a wholly owned subsidiary of BP P.L.C., a British company  
18 with international headquarters in London, England. BP ENERGY markets natural gas  
19 and electricity throughout the western United States.

20 32. Defendant GOLDMAN SACHS GROUP, INC. (“GOLDMAN SACHS”) is a Delaware  
21 corporation with headquarters in New York, New York. GOLDMAN SACHS sells and  
22 trades electricity in the PX and ISO markets.

23 33. The true names and capacities of Defendants used in this Complaint under the fictitious  
24 names of DOES 1 THROUGH 100, INCLUSIVE, (“DOES”) are unknown to Plaintiffs,  
25 who sue each such Defendant by such fictitious names. Each fictitiously named  
26 Defendant is responsible in some manner for acts, occurrences, or omissions that caused  
27 the violations of law alleged.  
28

1 34. Unless otherwise alleged, whenever this Complaint references any act of Defendants,  
2 such allegation shall mean that each Defendant acted individually and jointly with other  
3 Defendants named in the Complaint.

4 35. Unless otherwise alleged, whenever this Complaint references any act of any corporate or  
5 other business Defendant, such allegation shall mean that such corporation or business  
6 Defendant did the acts alleged in this Complaint through its officers, directors,  
7 employees, agents, and/or representatives acting within the actual or ostensible scope of  
8 their authority.

9 36. At all relevant times alleged in this Complaint, each Defendant has conspired, aided and  
10 abetted, or acted in concert with each other, in causing Defendants to commit acts of  
11 unfair competition or deceptive acts or practices in the conduct of any trade or commerce;  
12 acts of deceit with intent to commit fraud; or act of prima facie torts. Through their acts  
13 alleged herein, each Defendant acted with the knowledge of said conspiracy, common  
14 plan, scheme, or design and with the intent of carrying out such conspiracy, common  
15 plan, scheme, or design, all to the detriment of the reliability of the Montana electricity  
16 and natural gas markets and Montana residents and ratepayers.

17 **FACTUAL ALLEGATIONS**

18 37. On March 26, 2003, FERC released results of its major investigation into the  
19 extremely dysfunctional western energy markets in 2000 and 2001. Final Report on  
20 Price Manipulation in Western Markets, Docket No. PA02-02-000, March 26, 2003  
21 (hereinafter Exhibit "A"). The FERC report revealed evidence of manipulation in  
22 western electricity and natural gas markets.

23 38. To varying degrees, Defendant independent generators in California, including but  
24 not limited to WILLIAMS, DUKE, DYNEGY, MIRANT, and RELIANT, all  
25 deliberately and systematically withheld energy from the market. Such withholding  
26 created false shortages and scarcity, thereby artificially and illegally inflating  
27 electricity prices.  
28



- 1 39. Defendant generators and other suppliers intentionally submitted bids to the PX and  
2 ISO energy markets for the sole purpose of exercising market power. Defendants bid  
3 higher after the ISO was in system emergency for the sole and express purpose of  
4 increasing their own profits and artificially and illegally inflating electricity prices in  
5 the West beyond competitive levels
- 6 40. Defendant suppliers, including but not limited to EES, EPM, POWEREX, MIRANT,  
7 DYNEGY, and RELIANT, intentionally submitted false load schedules for the  
8 purpose of increasing electricity scarcity and market prices. This strategy was known  
9 by such names as “Fat Boy” or “Inc-ing” Load.
- 10 41. Defendant generators and power marketers, including but not limited to POWEREX  
11 and EL PASO, exported large amount of power out of California on a day-ahead  
12 basis. Defendants then imported that same power back into California to sell at  
13 inflated prices in the real-time market. This strategy was known as “Megawatt  
14 Laundering.”
- 15 42. Defendant market participants, including but not limited to EES, EPM, MIRANT,  
16 DUKE, and POWEREX, created fictitious congestion and counterflows through  
17 congestion games such as circular export-import schedules, known as “Death Star.”  
18 Such gaming resulted in payments to Defendants without actually moving power or  
19 relieving congestion.
- 20 43. Defendant generators, including but not limited to MIRANT, RELIANT, and  
21 DYNEGY, sold the same generation twice. Such Defendant generators sold reserves,  
22 but failed to keep the reserves available for use by the ISO.
- 23 44. Defendant generators, including but not limited to WILLIAMS, DYNEGY, and  
24 DUKE, purchased non-public information about competitors’ outages from Industrial  
25 Information Resources, Inc. (“IIR”). Defendants then used this information to time  
26 sales, outages, and other such activities.
- 27 45. Defendant sellers, power marketers, and public power utilities colluded in trading  
28 strategies to create false shortages and to artificially and illegally inflate electricity

1 and natural gas prices. Such collusion included trader conversations, industry group  
2 discussions, and sharing of otherwise competitive market information.

3 46. Through their membership in the Intercontinental Exchange (“ICE”), Defendant  
4 market participants, including but not limited to WILLIAMS, MIRANT, RELIANT,  
5 DUKE, and DYNEGY, colluded to manipulate the electricity and natural gas markets  
6 through such trading practices as creation of artificial transmission congestion (i.e.,  
7 “Death Star”). Defendants, including but not limited to GOLDMAN SACHS and  
8 MORGAN STANLEY, were key partners in ICE and colluded to create the energy  
9 crisis from its inception and maximize energy profits.

10 47. According to FERC, beginning in the summer of 2000, Defendants, including but not  
11 limited to RELIANT, manipulated natural gas markets at the Arizona-California  
12 border Topock hub by what FERC refers to as churning. As a consequence, natural  
13 gas prices in the California market increased dramatically during 2000. See, Exhibit  
14 “A,” FERC Report at II-1.

15 48. Defendants, including but not limited to RELIANT, MIRANT, and WILLIAMS, sold  
16 power to BPA. BPA passed through artificially and illegally high market-based rates  
17 to its consumers, including Montana ratepayers. BPA does and will continue to pass  
18 these artificially and illegally high rates through to Montana ratepayers.

19 49. Defendants, including but not limited to EL PASO, engaged in systematic natural gas  
20 price manipulation. Defendants manipulated the published natural gas price index in  
21 order to favor their own financial positions. See, Exhibit “A” at III-13 and 14.

22 50. Defendants, including but not limited to EL PASO, deliberately targeted the Sumas  
23 trading hub on the British Columbia-Washington border with false trades to be  
24 included in the December 2001 monthly price index. See, Exhibit “A” at II-2.  
25 Montana trading hubs such as AECO-C were affected by this fraudulent  
26 manipulation.

27 51. Defendant natural gas traders, including but not limited to EL PASO, WILLIAMS,  
28 EES, EPM, MIRANT, DYNEGY, DUKE and RELIANT, deliberately lied to Inside

1 FERC and Gas Daily, trade publications responsible for publishing various indices  
2 used by the natural gas industry to set prices for trades. Due to these deliberate lies  
3 by Defendants, natural gas prices became artificially and illegally inflated. See,  
4 Exhibit “A” at III-2.

5 52. Due to the highly interconnected nature of Western electricity and natural gas  
6 markets, California and Northwest gas prices significantly influenced prices in  
7 Montana. See, Exhibit “A” at V-7. Montana electricity and natural gas ratepayers  
8 suffered fraudulently increased prices passed through by local utilities attributable to  
9 Defendants’ market manipulation. Between 2001 and 2002, Montana Power  
10 Company (“MPC”) and NWE customers paid approximately \$31 million for natural  
11 gas, the price of which Defendants, including but not limited to EL PASO, EES,  
12 EPM, MIRANT, DYNEGY, DUKE, RELIANT, WILLIAMS, artificially and  
13 illegally inflated.

14 53. During the worst 12-month period of the artificial and illegal 2000 and 2001  
15 electricity and natural gas price increase, most, if not all, large Montana industrial  
16 power customers’ contracts expired. Defendant marketers in Montana, including but  
17 not limited to PGE and AVISTA, colluded in refusing to sell energy to industrial  
18 customers whose contracts had expired, forcing such customers to purchase power  
19 above Mid-C prices.

20 54. Because the Western Power Grid is interconnected, Defendant bad actors in the  
21 California market similarly affected short-term and long-term Montana electricity and  
22 natural gas markets. As purchasers of natural gas and electricity in such an affected  
23 market, Plaintiffs absorbed the entire illegal and artificial cost inflation.

24 55. As a result of Defendants’ collusion to manipulated prices for electricity and natural  
25 gas, Plaintiffs did pay and continue to pay rates greatly in excess of competitive and  
26 unmanipulated market prices, thereby damaging the State of Montana in general.  
27  
28

1 **CAUSES OF ACTION**

2 **FIRST COUNT ALLEGED AGAINST ALL DEFENDANTS**

3 (Entering an Agreement to Fix the Price of Electricity and Natural Gas)

4 56. Plaintiffs incorporate by reference Paragraphs 1 through 55 inclusive, as if fully set  
5 forth herein.

6 57. Mont. Code Ann. § 30-14-205(1) prohibits a person or group of persons, directly or  
7 indirectly, from entering an agreement for the purpose of fixing the price or  
8 regulating the production of an article of commerce.

9 58. Defendants agreed to withhold supplies of electricity and natural gas into the PX and  
10 ISO markets in order to manipulate the prices at which wholesale electricity and  
11 natural gas were sold. Defendants also agreed to manipulate electricity and natural  
12 gas prices in order to sell electricity and natural gas at artificially and illegally inflated  
13 prices. Additionally, Defendants agreed to refuse to sell energy to Montana industrial  
14 ratepayers, forcing such industrials to purchase power at inflated prices. Defendants  
15 agreed to engage in gaming strategies designed to substantially increase market prices  
16 for natural gas and electricity. As purchasers of electricity and natural gas, Plaintiffs  
17 entirely absorbed such illegally and artificially inflated prices.

18 **SECOND COUNT ALLEGED AGAINST ALL DEFENDANTS**

19 (Limiting Energy Supply to Create and Carry out Restrictions in Trade)

20 59. Plaintiffs incorporate by reference Paragraphs 1 through 58 inclusive, as if fully set  
21 forth herein.

22 60. Mont. Code Ann. § 30-14-205(2)(a) prohibits a person or group of persons from  
23 limiting production for the purposes of creating or carrying out any restriction in  
24 trade.

25 61. By deliberately withholding electricity and natural gas from the energy market,  
26 Defendants limited the available supply in order to artificially and illegally increase  
27 sale prices. Defendants' manipulation of electricity and natural gas prices through  
28

1 supply limitation damaged Plaintiffs who, as purchasers of such electricity and  
2 natural gas, entirely absorbed such artificially and illegally inflated rates.

3 **THIRD COUNT ALLEGED AGAINST ALL DEFENDANTS**

4 (Increasing the Price of Electricity and Natural Gas to Create and Carry out Restrictions  
5 in Trade)

6 62. Plaintiffs reallege Paragraphs 1 through 61 inclusive, as if fully set forth herein.

7 63. Mont. Code Ann. § 30-14-205(2)(b) prohibits a person or group of persons from  
8 increasing the price of merchandise or commodities for the purpose of creating or  
9 carrying out any restriction in trade.

10 64. Defendants artificially and illegally increased prices for electricity and natural gas  
11 during 2000 and 2001 in order to restrict trade by “gaming” the market and  
12 submitting false trade information. As purchasers of electricity and natural gas at  
13 artificially and illegally inflated rates, Plaintiffs entirely absorbed such artificial and  
14 illegal price increases.

15 **FOURTH COUNT ALLEGED AGAINST ALL DEFENDANTS**

16 (Preventing Competition in the Sale of Electricity and Natural Gas)

17 65. Plaintiffs reallege Paragraphs 1 through 64 inclusive, as if fully set forth herein.

18 66. Mont. Code Ann. §30-14-205(2)(c) prohibits a person or group of persons from  
19 preventing competition in the distribution or sale of merchandise or commodities.

20 67. Defendants prevented competition in the sale of electricity and natural gas by each  
21 acting as an agent and co-conspirator of each other Defendant. Defendants’ actions,  
22 individually and collectively, prevented true competition in the western energy  
23 market. Defendants acted within the scope of this agency and conspiracy and,  
24 continuing to date, engaged in a conspiracy to violate the law as herein detailed and to  
25 mislead and deceive governmental agencies and purchasers of electricity and natural  
26 gas.



1 in the western energy markets in 2000-2001. Various investigations and legislative  
2 actions were forestalled on the representations of these Defendants, with the result  
3 that Montana has been substantially harmed economically in a way that could have  
4 been prevented but for Defendants' misrepresentations. Such reliance on Defendants  
5 statements was justified given the concealed and conspiratorial nature of Defendants'  
6 misconduct.

7 75. Plaintiffs were consequently and proximately harmed by reliance on Defendants'  
8 fraudulent representations because Plaintiffs paid for natural gas and electricity prices  
9 that were significantly higher than they would have paid in an unmanipulated market  
10 provided with true information.

11 **SEVENTH COUNT ALLEGED AGAINST ALL DEFENDANTS**

12 (Prima Facie Tort)

13 76. Plaintiffs reallege Paragraphs 1 through 75 inclusive, as if fully set forth herein.

14 77. The common law principle of a prima facie tort states that harm intentionally inflicted  
15 is prima facie actionable unless justified.

16 78. Defendants committed massive fraud on the entire western electricity and natural gas  
17 market in 2000 and 2001 in order to artificially and illegally inflate electricity and  
18 natural gas prices. Defendants acted with the intent and result of depriving millions  
19 of persons of electricity and natural gas, including commercial and residential  
20 ratepayers throughout the West, costing such persons money and detrimentally  
21 affecting state economies throughout the West. Included among those ratepayers  
22 deprived of money are Montana citizens and residents and those state economies  
23 harmed include Montana's economy. Defendants so acted with no justification other  
24 than to illegally increasing their own profits.

25 79. Defendants intentionally inflicted harm on Plaintiffs causing special damages to  
26 Plaintiffs, in the form of artificially and illegally inflated electricity and natural gas  
27 prices, without excuse or justification. Defendants committed such prima facie tort  
28

1 through a series of actions that would otherwise be lawful, save for Defendants'  
2 massive fraudulent acts.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as  
5 follows:

- 6 1. For injunctive relief, as authorized in Mont. Code Ann. § 30-14-222 (1), to enjoin  
7 Defendants, and each of them, their successors, agents, representatives, employees,  
8 and all persons acting in concert with them, from engaging in unfair or deceptive  
9 trade practices in the conduct of any trade or commerce, including, but not limited to,  
10 the types of acts or practices herein alleged;
- 11 2. For an order, as authorized by Mont. Code Ann. §30-14-222(2), directing Defendants,  
12 and each of them, to pay three times the amount of actual damages sustained by  
13 Plaintiffs as a results of Defendants' unfair or deceptive trade practices alleged herein  
14 in an amount according to proof;
- 15 3. For damages incurred by Plaintiffs as the direct result of Defendants' deceit with  
16 intent to commit fraud and involvement in the prima facie tort as alleged herein;
- 17 4. For pre- and post-judgment interest;
- 18 5. For attorneys' fees and costs of the suit incurred herein; and
- 19 6. For such other and further relief as the nature of the case may require and the Court  
20 deems just and proper.

21 Dated this 30th day of June, 2003.

22  
23 MICHAEL J. UDA,  
24 Special Assistant Attorney General  
25 DONEY, CROWLEY,  
26 BLOOMQUIST & UDA, P.C.  
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Attorneys for Plaintiffs



1 DEMAND FOR JURY TRIAL

2  
3 Plaintiff hereby demands a jury trial.

4 Dated this 30th day of June, 2003.

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7 MICHAEL J. UDA,  
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10 Attorney for Plaintiffs  
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